~~NdeB:NS:lw:hhl~~

4 JUN 7 1961

4 Edwin O. Guthman
4 Special Assistant for Public Information

4 Nicholas deB. Katzenbach
4 Assistant Attorney General
4 Office of Legal Counsel
4 Press Access to Federal Prisoners.

cc: Files
7 Mr. Katzenbach
Mr. Siegel
Mrs. Copeland

To Pub. Inf. 6/7/61

This is with reference to your memorandum to me of April 8, 1961. Attached is a memorandum by the Director of the Bureau of Prisons in which he has set forth the reasons which in his view justify the existing practices of the Department regarding contacts between prisoners in Federal custody and members of the press. I have no doubt as to the legal authority for these practices. At the same time it seems to me that it may be possible to do something along the lines suggested by the Attorney General, that is, to give the press greater access to Federal prisoners.

1. The general control and management of Federal penal institutions are vested in the Attorney General who is authorized to appoint necessary officers and employees, and provide for the government, discipline and care of inmates (18 U.S.C. 4001). Congress has also authorized the Director of the Bureau of Prisons to contract with State authorities for the imprisonment and care of persons held under authority of federal laws (18 U.S.C. 4002). In addition, explicit provision is made that the Bureau of Prisons, under the direction of the Attorney General, shall have charge of the management and regulation of all Federal penal institutions, and provide for the care, protection and discipline of all persons charged with offenses against the United States except military offenses (18 U.S.C. 4042).

In construing these related provisions the courts have uniformly recognized that the Attorney General and the Bureau of Prisons have the broadest latitude in the administration of prisons, and that the courts will not interfere with the

conduct of prisons or their discipline. 1/ In one case, it was held that while the Attorney General and subordinates in charge of federal penal institutions lack authority arbitrarily to deny a prisoner communication with the outside world, these federal officials do have "wide powers of control over such communication." 2/ In another case, the court refused to interfere with a ruling that an inmate was not entitled to conduct business affairs relating to publication of a book authored by him while in prison, and to carry on correspondence with outsiders in that connection. 3/

In our view the broad statutory powers vested in the Attorney General and the Director of the Bureau of Prisons furnish a solid legal basis for the regulations here involved.

2. Mr. Bennett justifies the policy of refusing access to Federal prisoners awaiting trial on the following grounds:

(a) It may prejudice the Government's case and make more difficult the successful prosecution of the defendant.

(b) It may provide plausible ground for reversal on appeal based on prejudicial publicity.

(c) It may be objectionable to wardens and superintendents of local jails and institutions where prisoners are held while awaiting trial, and may result in a refusal by local authorities to cooperate with federal officials.

(d) The Federal courts may object.

As to prisoners who have been committed to the penitentiary, Mr. Bennett states that "substantially the same reasoning would apply." In this connection, however, Mr. Bennett

1/ Sturm v. McGrath, 177 F. 2d 472 (10 Cir. 1949); Powell v. Hunter, 172 F. 2d 330 (10 Cir. 1949); In re Taylor, 187 F. 2d 852 (9 Cir. 1951) cert. denied 341 U.S. 955; Stroud v. Swope, 187 F. 2d 850 (9 Cir. 1951) cert. denied 342 U.S. 829; Williams v. Steele, 194 F. 2d 32 (8 Cir. 1952) cert. denied 344 U.S. 822.

2/ Dayton v. McCranery, 201 F. 2d 711, 712 (D.C. Cir. 1953).

3/ Stroud v. Swope, supra note 1.

stresses also that press interviews would increase supervision costs, create confusion, upset routine and prevent wardens from discharging their duties. It seems to us that the gist of Mr. Bennett's concern, when distilled, is that prison discipline and prison administration would be hurt.

We are not overly impressed by the first reason, particularly where the prisoner himself seeks the opportunity to talk to a member of the press, as was the case mentioned by you and by the Moss Subcommittee of the confessed bank robber who was held on federal charges in a county jail. It does not seem to us that an interview will necessarily result in all cases in weakening the Government's case. A workable solution would be to leave the matter of the interview to the judgment of the United States Attorney involved; if he believes that no harm to the Government's case will ensue that should be enough. Of course, the situation is different where the prisoner is lodged in a nonfederal jail and the authorities in charge also follow the practice of refusing to permit prisoners to be interviewed by the press. If these authorities object to departing from this practice even in the case of federal prisoners in their custody, we would have to accede as a practical matter.

Mr. Bennett cites the Delaney case, 199 F. 2d 107 (C.A. 1, 1952), to show that prejudicial publicity "generated by the Government" may be a basis for reversal. That case involved nationwide adverse publicity given to the defendant as a result of open congressional subcommittee hearings after the defendant had been indicted. The Department of Justice had nothing to do with these hearings and in fact objected. It is true, of course, that the Department should avoid "generating" publicity which would make it difficult for the defendant to obtain a fair trial. On the other hand, we do not believe that a defendant who himself seeks an interview can properly complain on the ground of unfairness by the Department. Of course, if the prisoner objects to being interviewed he is within his rights and the Department should not permit reporters to attempt to persuade him otherwise.

Mr. Bennett also states that a number of Federal judges with whom he has discussed the existing policy "have wholeheartedly" agreed with it. This raises the general question of attempting to change our practice without prior consultation with the Federal judiciary. Insofar as this view relates to prisoners who are on trial or are awaiting trial, we agree with Mr. Bennett that nothing should be done along these lines until we secure the view of the Judicial Conference.

The reasons--other than those relating to the maintenance of discipline--Mr. Bennett has advanced to support the present policy as it relates to prisoners awaiting trial do not appear to have relevance with respect to prisoners who have been convicted and are serving their sentences. There is no occasion to be concerned with questions of weakening the Government's case or of supplying the defendant with a basis for claiming that his trial was unfair. In our view there is, however, a serious and legitimate concern as to the likelihood that press interviews would complicate prison administration and adversely affect discipline. For example, it would seem to be most inappropriate to permit mass press conferences or television interviews to be held in prison. Similarly, considerations relating to discipline would seem to require that a convicted prisoner's request for a press interview should be denied except in the most unusual circumstances.

On the other hand, without creating problems of the same magnitude, it may be possible to permit a reporter who requests such permission to visit and interview a prisoner without unduly affecting prison discipline. Even such a procedure would probably involve problems with which Mr. Bennett is no doubt familiar, and these should be discussed with him. You may wish to do so yourself. However, if you desire us to do so, we will be pleased to.